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09/882,627	06/15/2001	John G. Ciesar	5557-8	8478

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LAFF, WHITESEL & SARET, LTD.  
Suite 1700  
401 N. Michigan Avenue  
Chicago, IL 60611

EXAMINER

ARYANPOUR, MITRA

ART UNIT PAPER NUMBER

3711

DATE MAILED: 11/12/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/882,627

**Applicant(s)**

CIESAR ET AL.

**Examiner**

Mitra Aryanpour

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 02 April 2004 and 21 September 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 35-51 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 35,36 and 40-51 is/are rejected.
- 7) ☐ Claim(s) 37-39 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Specification*

1. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 35 and 43 are rejected under 35 U.S.C. 102(b) as being anticipated by Kallassy (WO 99/26705).

Regarding claim 35, Kallassy shows a swing trainer for training players in golf or baseball. Kallassy only describes the specifics for the trainer when used in golf, but contemplates that similar concepts can have application for training in other sports such as baseball. The swing trainer including a shaft (12) having first and second ends, a cylindrical handle (14) attached to the first end of the shaft (12), a cylindrical head (weight 330; see figure 15) having a central bore with the second end of the shaft (12; best seen in figure 14), and a graspable cylindrical slide (slidable grip 20; the slidable grip 20 is generally cylindrical; see page 12, lines 3-7) sized to

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accommodate all of the fingers of a user's hand (see 14) for striking the head (weight 330) to produce an audible signal (see page 9, lines 7-10), the slide (slidable grip 20) being mounted on the shaft (12) for axial sliding movement between the handle (14) and the head (weight 330), a stop (fixed grip 18) attached adjacent the handle (14), and the graspable slide (20) having first and second ends (see figures 5 and 14) and including first and second buffers at its first and second ends (in figure 5, the flared portion 24 on one end and the notched section on the opposite end; in figure 13 the flared section on one end and the stop means 202 on the opposite end; in figure 14, the flared section on one end and the recessed notched 29 section on the other end), the first buffer limiting movement of the graspable slide toward the handle (14) by contacting the stop (18) adjacent the handle (14) and the second buffer limiting movement of the graspable slide (20) toward the head (weight 330) by contacting the head (weight 330).

Regarding claim 43, Kallassy shows the handle (14) is covered with a leather wrap, foam grip or other suitable material and the slide is covered with a leather wrap, foam grip or other suitable material to match the covering of the handle (see page 8, lines 9-11).

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 36 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kallassy (WO 99/26705) in view of Mollica (5,360,209) or Duran (5,577,966).

Regarding claim 36, Kallassy in the golf embodiment shows the shaft (12) to have a substantially uniform circumference (see figure 1). Kallassy does not expressly disclose the specific type of baseball bat that can be employed for training a baseball player. Both Mollica and/or Duran show training bats having a shaft with a substantially uniform circumference (see figures 1 respectively). In view of Mollica or Duran it would have been obvious to utilize a bat having a substantially uniform shaft for the training device of Kallassy, the motivation being so the slide is easily slidably on the shaft.

6. Claims 40 and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kallassy (WO 99/26705) in view of Mollica (5,360,209). With regards to claimed weight ranges, the claimed weight range are well known training ranges.

Regarding claims 40 and 41, Kallassy shows that the head (16) can be alternatively replaced by a weight (330) or other non-conventional terminations. Additionally, Kallassy teaches positioning the weight at various locations on the shaft. However, Kallassy does not show interchangeable heads being of differing weights. Mollica shows a training bat having a weighted head (weighted member 20), wherein the weight may be varied from device to device in order to meet the needs of the individual batter (see column 2, lines 49-53). In view of Mollica it would have been obvious to provide different heads with differing weights, the motivation being to meet the needs of the individual batter.

7. Claim 42 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kallassy (WO 99/26705) in view of Uke (5,303,917).

Regarding claim 42, Kallassy does not disclose the specifics of the training bat. Therefore, he does not disclose if an end cap could be used. The inclusion of weights on training

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implements is old and conventional. This feature is also shown by Uke. Uke shows a training bat, wherein the weight can be in the form of shots or slugs and it can be center loaded or positioned in the end cap (see figure 6; also column 6, lines 40-68). In view of Uke, it would have been obvious to include weights in the end cap portion of Kallassy's modified bat in order to increase the force when the player swings the bat.

8. Claim 44 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kallassy (WO 99/26705) in view of Bratt (3,955,816).

Regarding claim 44, Kallassy teaches alternative handles (see page 12, lines 1-7). However, Kallassy does not expressly disclose that the handles are removable. To provide handles that are integral or releasably removed with respect to the shaft is well known in the sports art and also demonstrated by Bratt. Bratt shows a warm-up bat wherein the bat has a series of different sized interchangeable handles which fasten and unfasten from the tubular section to permit access to the hollow chamber and to allow change to the effective size of the bat (see claim 4). It would have been obvious in view of Bratt to have provided the same for Kallassy's bat and/or club, the motivation being to permit access to the hollow chamber.

9. Claims 45-51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kallassy (WO 9900/26705).

Regarding claim 45, Kallassy shows the stopping means (202) comprises a ring (the stop means is ring-shaped; see page 12, line 10 and 11) secured to the shaft (12).

Regarding claim 46, in an alternative embodiment Kallassy shows the stop (202) comprises first and second portions adapted to fit together to form a ring around the shaft (see figure 12).

Regarding claim 47, Kallassy shows the slide (20) has means on one end (24) for contacting the stopping means (22), and protecting the user's hands from being pinched (see page 9, lines 1-7); and means on the other end for contacting the head and protecting the user's hands from being pinched. Kallassy also shows buffer means (24) positioned on the end of the slide that has a diameter larger than the diameter of the slide (see page 9, lines 13-18; also see figure 3). Kallassy further shows the contacting and protecting means are rings (see figure 5, wherein the upper and lower sections of the slide form ring-like formations) affixed to the distal ends of the slide (20)

Regarding claim 48, as best seen in figure (5), Kallassy shows the handle and slide have substantially the same diameter. Alternatively, Kallassy teaches that the handle and slide can be substantially cylindrical (see page 12, lines 3-7).

Regarding claims 49 and 50, Kallassy does not expressly disclose the use of aluminum or metal alloy for the shaft and handle. However, the aforementioned materials are well recognized in the art, and it would have been obvious to use either one for the practice device of Kallassy. Official Notice is taken of such.

Regarding claim 51, Kallassy shows a mechanical means for emitting an audible signal (see page 9, lines 8-10).

***Allowable Subject Matter***

10. Claims 37-39 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

*Response to Arguments*

11. Applicant's arguments filed 02 April 2004 have been fully considered but they are not persuasive. Per applicant's request the preliminary amendment and Declaration in related Application No. 10/407,284 has been carefully reviewed.

With regards to applicant's remarks regarding the rejection of claim 32, as indicated above Kallassy teaches a swing trainer device that can be used for golf or baseball, but only describes the embodiment for golf. When applying the specific structure i.e. handle, slide, weighted head to a baseball bat, one would not use the steps to swing a golf club, but rather would use well known steps to swing a baseball bat. Such has clearly been implied in the Kallassy patent. With regards to applicant's remarks that the Kallassy device makes a "snapping sound" and not an audible signal. A snapping sound is an audible signal.

With regards to applicant's remarks that neither Kallassy nor Anderson teach or suggest the use of a plurality of rods for securing within the shaft of the device. Anderson shows a metal rods or weights 33 having different weights can be inserted into the hollow chamber 23 to change the overall weight of the training bat 1. Applicant has not disclosed in the specification as filed that "a plurality of rods" are simultaneously positioned within the shaft. Support can be found in the specification for the following "The shaft may vary in length and may consist of a hollow tube adapted to receive and hold a variety of weighted rods."(see page 7, lines 3 and 4 of the Specification as filed). The aforementioned statement does not support having a plurality of rods simultaneously positioned within the shaft, but rather that rods of different weights can be positioned within the shaft. Therefore, "a plurality of rods" has been interpreted as "providing different weighted rods".



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With regards to applicant's remarks that Kallassy not showing interchangeable heads of differing weights. Kallassy shows that the head (16) can be alternatively replaced by a weight (330) or other non-conventional terminations. The term "replaced" is synonymous with "interchanged or interchangeable". However, Kallassy does not expressly teach that different weights 330 can be used. Mollica teaches the aforementioned.

With regards to applicant's remarks that Kallassy does not teach an electronic means for emitting the audible signal. Claim 51 requires either a mechanical or an electronic means. Kallassy shows a mechanical means.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mitra Aryanpour whose telephone number is 703-308-3550. The examiner can normally be reached on Monday - Friday 9:00 to 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Vidovich can be reached on 703-308-1513. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MA  
05 November 2004

  
MITRA ARYANPOUR  
PATENT EXAMINER